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FILED  
UTAH APPELLATE COURTS  
MAY 24 2007

Attorneys for Petitioners

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**IN THE UTAH SUPREME COURT**

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CURTIS S. BRAMBLE, in his capacity  
as a Senator for the State of Utah;  
STEPHEN H. URQUHART, in his  
capacity as a House Representative for  
the State of Utah; BRENDA LARNER,  
an individual; LAURA JOHNSON, an  
individual; PEGGY MACIEL, an  
individual; and PARENTS FOR  
CHOICE IN EDUCATION, INC., a  
Utah corporation,

Petitioners,

vs.

OFFICE OF LEGISLATIVE  
RESEARCH & GENERAL COUNSEL,  
a government entity; and GARY R.  
HERBERT, in his capacity as  
Lieutenant Governor of the State of  
Utah,

Respondents.

**PETITION FOR REVIEW OF  
BALLOT TITLE ON HB 148  
AND/OR FOR AN  
EXTRAORDINARY WRIT; AND  
FOR EMERGENCY RELIEF  
STAYING DEADLINE FOR  
SUBMISSION OF ARGUMENTS  
ON REFERENDUM**

Supreme Court No. 20070407

174”) and intend to do so when the Program is implemented. As detailed in their Affidavits contained in the Addendum, they each have a special and particularized interest in the Scholarship Program and the outcome of the referendum on HB 148.

4. Petitioner Parents for Choice in Education, Inc. is an organization that is focused on improving Utah’s public school system through the introduction of meaningful school choice. PCE is comprised of citizens and parents who support school choice, who intend to enroll their children in the scholarship program, and/or who intend to otherwise take advantage of the provisions of HB 174 and HB 148. Through grassroots organization and focused lobbying efforts, PCE is striving to create a vibrant education system, characterized by abundant choice, which will offer excellent education to all students through diverse, competitive providers. Ultimately, PCE believes the focus of education should be on the child, not the system. In addition to its particularized interests in this proceeding, PCE’s affiliated political issues committee previously requested formal notice of any ballot title proceedings pursuant to Utah Code Section 20A-7-308(4)(a)(ii)(B).

5. Respondent Office of Legislative Research and General Counsel (“Legislative Research”) is the governmental entity responsible for drafting impartial ballot titles that accurately summarize the contents of any referendum. Legislative Research is a Respondent in this proceeding because Petitioners seek review of the ballot title that Legislative Research has proposed for the referendum on HB 148. *See* Utah Code Ann. § 20A-7-308.

superseded and changed by House Bill 174 (“HB 174”) are the subject of the referendum and will “take effect” if approved by voters.

2. Whether this Court should enjoin Lieutenant Governor Gary R. Herbert and all other officers from placing the Ballot Title for vote on the official ballot for the scheduled special election where the petition on which the referendum is based was materially misleading and did not comply with the statutory requirements for referendum petitions.

3. Whether this Court should grant emergency relief staying the deadlines for submitting arguments on the HB 148 referendum in order to facilitate this Court’s meaningful review of these matters.

### **RELIEF SOUGHT**

Petitioners request that this Court revise the wording of the Ballot Title to accurately describe the portions of HB 148 that are subject to referendum. In addition, Petitioners request that this Court enjoin the Lieutenant Governor and all other officers from printing the Ballot Title on the official ballot for the scheduled special election in November.

In order to fully review this matter without issues being rendered moot, Petitioners also request that this Court stay the statutory deadlines for submitting arguments for placement in the voter information pamphlet, as required by Utah Code Section 20A-7-705, pending the Court’s decision in this matter. Because the initial deadline for these

make any attempt to clarify in the Petition or the referendum packets that significant portions of HB 148 had been substantively superseded and changed by HB 174.

4. After the county clerks verified the Petition signatures that were submitted, the Lieutenant Governor certified the Petition as sufficient and delivered the Petition to Legislative Research. Pursuant to statutory directive, Legislative Research prepared the Ballot Title for the referendum purporting to summarize the contents of the measure to be subjected to a referendum. On May 15, 2007, Legislative Research delivered to the Lieutenant Governor the following Ballot Title:

Citizens' State Referendum Number 1  
Ballot Title

In February 2007, the Utah Legislature passed H.B. 148, Education Vouchers. This bill will take effect only if approved by voters. The bill:

- establishes a scholarship program for:
  - qualifying school-age children who newly enroll in eligible private schools; and
  - lower income school-age children who continue their enrollment in eligible private schools;
- provides for scholarships within that program of \$500 to \$3,000, depending on family size and income, increasing those scholarship amounts in future years; and
- allows school districts to retain some per-student funding for scholarship students who transfer to private schools.

Are you for or against H.B. 148 taking effect?

5. Although Legislative Research has acknowledged that HB 174 affects the operation of HB 148, Legislative Research did not draft the Ballot Title to incorporate or address any of those effects. Instead, Legislative Research has suggested that it will “consider the provisions enacted by HB 174, which are now law” and address them only

resolution of ballot title issues by giving this Court original jurisdiction to hear such challenges. *See* Utah Code Ann. § 20A-7-308(4).

Senator Bramble and Representative Urquhart must submit arguments on the referendum to Lieutenant Governor Herbert by June 1, 2007—one week from now. To do so, they must know what the proper scope of the referendum is, and whether they must write arguments defending a law that has been substantively changed and superseded, as the current Ballot Title suggests they must. After that, the parties will engage in expensive campaigns, voter information pamphlets will be printed and distributed, and the process will move rapidly towards the scheduled election in November. If this Court declines review and requires the process to wind its way through the district court before again reaching this Court, the same timeliness issues identified in *Cook* will render this matter moot. Meaningful review must take place now, and it must be final.

In addition, review by this Court is appropriate because this Petition presents strictly legal questions with no disputed facts. This Court is uniquely positioned to resolve those questions, and it should do so as soon as possible.

#### **STATEMENT OF JURISDICTION AND PETITIONERS' STANDING**

There are two alternative grounds on which this Court may hear this Petition. First, this Court is the statutorily designated forum for challenges to ballot titles under the Election Code. Second, this Court has original jurisdiction over extraordinary writs and has previously recognized the appropriateness of such writs to resolve time-sensitive election issues. Petitioners have standing under either basis.

request (such as PCE).<sup>2</sup> *See id.* § 20A-7-308(4)(a)(ii). Because Petitioners would be entitled to participate in a ballot title challenge were it brought by the sponsors, it should make no difference whether these parties or the measure’s sponsors initiate the challenge, since the governing standard is the same in either event, and the need for prompt resolution is identical. *See id.* § 20A-7-308(4)(b).

Second, and more fundamentally, interpreting the statute to permit ballot title challenges only by petition sponsors would leave this Court with no mechanism to review ballot titles that are misleading, false, or biased so long as the ballot title favored the sponsors. It would make no sense to limit this Court’s review in that way or to ignore the legitimate interests of the measure’s opponents, and the electorate as a whole, in ensuring that the ballot title is accurate. For these reasons, when faced with an identical situation, the Washington Supreme Court granted review to opponents of a ballot initiative on the grounds that permitting challenges solely by the measure’s sponsors would be an unconstitutional violation of the equal protection clause. *See In the Matter of the Ballot Title for Initiative 333*, 558 P.2d 248 (Wash. 1977) (en banc). As the court explained:

We do not deny that the proposers of an initiative have a definite interest in a ballot title which reflects their intended purpose. However, this is not to say that opponents have no interest in a ballot title which accurately reflects the purpose of the initiative. Just as the ballot title may not accurately reflect the proposers’ purpose, it may also be misleading in favor of the proposers’ purpose. . . . **If impartiality is required, it is unreasonable to deny review to opponents. Denying review to opponents has the effect**

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<sup>2</sup> *See* Affidavit of Douglas D. Holmes (“Holmes Aff.”) at ¶ 6 and Exhibit “1” thereto, copies of which are included in Petitioners’ Addendum as Add. “T”.

disputes. *Gallivan v. Walker*, 2002 UT 73, ¶ 4, 54 P.3d 1066 (quoting *Renn v. Utah Bd. of Pardons*, 904 P.2d 677 (Utah 1995)) (exercising extraordinary writ authority to hear constitutional challenge to initiative signature requirement). As detailed above, a deadline is looming one week from now for Senator Bramble and Representative Urquhart to submit arguments on the referendum. It is critical that the scope of the referendum be properly defined before these arguments are drafted and submitted, and before significant public funds are expended printing and distributing voter information pamphlets and preparing for the election. See *In re: Petition of Merrill Cook*, 882 P.2d at 659 (requiring election disputes to be decided “at the earliest possible opportunity” and denying review of ballot title on laches grounds where pamphlets had already been printed and were being distributed).

The Election Code specifically recognizes the need for prompt resolution of ballot title disputes by giving a right of direct review to the measure’s sponsors. If this Court declines to grant a similar right of review to the measure’s opponents under the statute, it should do so under its extraordinary writ authority.

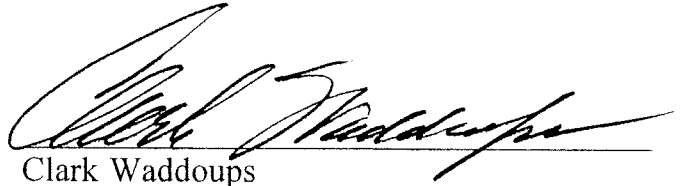
Assuming the Court exercises that authority, each of the specific Petitioners in this case has standing to seek the requested relief. Under Rule 65B, any person “aggrieved” or “whose interests are threatened” by the failure to properly discharge an official duty

Addendum. As explained therein, each of them would be particularly and specifically affected by a referendum that improperly stayed and/or repealed the entire Program, rather than just the surviving provisions of HB 148. As parents and members of the electorate, they have clear and particularized interests in both the process and outcome of this referendum, which is sufficient to confer standing under Rule 65B. *See* Affidavit of Brenda Larner at ¶¶ 2-13; Affidavit of Laura Johnson at ¶¶ 2-12; Affidavit of Peggy Maciel at ¶¶ 2-10, copies of which are included in Petitioners' Addendum as Add. "Q" through "S", respectively.

Similarly, PCE is comprised of parents whose children will be directly affected by the proposed referendum and its effect on the Scholarship Program. Its specific interests are also set forth in detail in its Affidavit in Petitioners' Addendum. PCE has a direct interest in ensuring that the referendum process be fair and accurate, and that the existing Program created by HB 174 be implemented by the State Board of Education in time for the upcoming school year. PCE accordingly has associational standing under Utah law, which requires only that PCE's members individually have standing to sue, but that their individual participation is not indispensable to a proper resolution of this matter. *See Utah Restaurant Ass'n v. Davis County Bd. of Health*, 709 P.2d 1159, 1163 (Utah 1985). Both criteria are satisfied here. *See* Holmes Aff. at ¶¶ 3-5, Add. T.

In addition to traditional associational standing, an affiliate of PCE has also registered as a political issues committee and requested notice of any ballot title challenge on HB 148 under Utah Code Section 20A-7-308(4)(a)(ii)(B), giving PCE the

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of May 2007.

A handwritten signature in black ink, appearing to read "Clark Waddoups", written over a horizontal line.

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